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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,765	07/01/2003	Leonard R. Sokola SR.	SOK-101US	2171

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RATNERPRESTIA
P.O. BOX 1596
WILMINGTON, DE 19899

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 12/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/611,765	Applicant(s) SOKOLA, LEONARD R.	
	Examiner Stephen J. Castellano	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 6,8,9,14,15 and 21-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,10-13 and 16-20 is/are rejected.
- 7) ☒ Claim(s) 2,9,14,15,21 and 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 May 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3727

Applicant's election without traverse of the specie of Group III: Fig. 4, claims 1-5, 7, 10-13 and 16-20 in the reply filed on August 18, 2004 is acknowledged.

Claims 6, 8, 9, 14, 15 and 21-23 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected specie, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on August 18, 2004.

The amendment filed May 24, 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Figures 3-6 display new matter. Figures 3, 4 and 6 show a bowl, there is support for a bowl, the shape and dimensions of the bowl are new matter. Figure 5 shows the phrase "Don't Pig Out!" The location of this phrase on the dish is new matter.

Applicant is required to cancel the new matter in the reply to this Office Action.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the bowl as stated in claim 2, the likeness being affixed to the upper surface, lower surface and edge of a shallow container as stated in claim 9, the likeness resembles a walrus, hippopotamus, whale, imaginary creature or an obese person as stated in claims 14 and 15, the motivational message as part of a graphical diet reminder as stated in claim 21 and the hollow statuette of a pig removably affixed to the border section, the statuette having a bottom and a removable top as stated in claim 23 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Note that claim

Art Unit: 3727

23 mixes elements of the Fig. 3 embodiment wherein the statuette is removably affixed and elements of the Fig. 4 embodiment wherein the statuette has a bottom and a removable top. All the elements of claim 23 are taught, just not in one embodiment or specie.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claims 2, 9, 14, 15, 21 and 23 are objected to because the various features of these claims as discussed above are not shown in a drawing. No new matter should be entered.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Buj.

Buj discloses a dinnerware article (plate and eating utensils) adapted to receive food, comprising: a shallow container (plate or dish), a raised likeness of a creature (statuette of dolphin 2) affixed to the upper surface and a graphical diet reminder on the upper surface (spoon 3 and fork 6).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buj.

Art Unit: 3727

Buj discloses the invention except for the resemblance of a pig. It would have been obvious to modify the type of creature resembled (such as a pig) as a matter of design choice and as a matter of little criticality since the application teaches a wide variety of different animals.

Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buj in view of Gruneisen, III (Gruneisen).

Buj discloses the invention except for the likeness being hollow. Gruneisen teaches a container that resembles a basketball that is hollow and has a bottom and a removable top. It would have been obvious to modify the likeness of the dolphin to be hollow and have a bottom and a removable top as motivated by the reduced weight and access to a separate compartment that can provide storage adjacent to the shallow container.

Claims 13, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buj in view of Brownell.

Buj discloses the invention except for graphical diet reminder on the central section and the graphical diet reminder indicating a breakdown of diet according to food categories, comprising an image of a food pyramid, comprising a motivational message and comprising numerical nutritional information. Brownell teaches a food pyramid shaped plate. It would have been obvious to shape the plate of Buj to be triangular and to include compartments corresponding to sizes of food groups in order to remind the consumer of proper nutritional eating habits.

Claims 1, 10, 13, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brownell in view of Buj and Gruneisen.

Art Unit: 3727

Brownell discloses a dinnerware article adapted to receive food, comprising: a plate having an upper surface with a center or center section and a border section adjacent and surrounding the center section, the border section extending to the edge, an image of a food pyramid on the central section as the compartments form a pyramid shape. Insofar as the so called pyramid of the present invention is triangular in shape, the triangular shape of the central section defines the pyramid. Brownell discloses the invention except for the removably affixed hollow statuette of a pig and removable top of the statuette. Buj teaches an animal statuette and Gruneisen teaches a hollow removable statuette with a removable top. It would have been obvious to add a removable hollow statuette to provide another compartment of aesthetically pleasing appearance to provide an added area for storage that has ready access through a removable top. It would have been obvious to make the statuette resemble a pig or any other animal as motivated by design choice and personal preference as no criticality has been associated with the pig.

Applicant's arguments filed May 24, 2004 have been fully considered but they are not persuasive. Applicant states that the spoon and fork are not graphical. The spoon and fork are pictorial and represent a spoon and fork. Applicant further states that the spoon and fork are not diet reminders. Insofar as the spoon and fork have a size and the capability to hold a specified quantity and are not capable of holding more than a certain quantity, then they represent diet reminders of a similar nature as the food pyramid which is based upon serving sizes and they prompt the user to consume a proper quantity and balance of food.

Applicant's statement that Gruneisen does not comprise a hollow space adapted to contain at least one pill is not well taken since Fig. 7 is a top view of the bottom portion (the top

Art Unit: 3727

portion removed) and Fig. 8 is a bottom view of the top portion (the bottom portion removed). the hollow space formed between the top and bottom portions appears to be large enough to contain at least one pill.

Brownell pictorially represents a food pyramid, the exact same diet reminder that applicant uses. Applicant further states that Brownell lacks a teaching of different foods being placed in various compartments. The claims do not recite any limitations about different foods being placed in various compartments.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

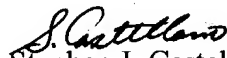
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on M-Th 6:30-5.

Art Unit: 3727

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc